

Application No. 10/830,196
Amendment Dated: November 15, 2005
Reply to Notice of Non-
Compliant Amendment of: November 8, 2005

REMARKS/ARGUMENTS

Applicant has amended claims 1 and 8 to cure the informalities noted by the Examiner.

Applicant has amended the abstract of the disclosure to comply with the 150-word limit.

Claims 2-4, 8-11 and 15 have been indicated to recite allowable subject matter. Claims 16-17 have been allowed. Upon entry of the amendment claims 1-11 and 14-17 remain in the application.

The Examiner has indicated that this application should be changed to a continuation-in-part on the purported basis that "the instant application includes additional disclosure (see Figs. 9-11, and joist/base support 200) not presented in prior Application No. 09/923,288".

MPEP 201.08 states "[a] continuation-in-part is an application filed during the lifetime of an earlier non-provisional application, repeating some substantial portion or all of the earlier non-provisional application and *adding matter not disclosed* in the earlier application".

Applicant respectfully requests that the Examiner withdraw this requirement since the instant application does not add matter not disclosed in the earlier Application No. 09/923,288. Figs. 9-11 and the reference to the joist/base support were fully disclosed in Application No. 09/923,288. Support for these figures is set forth in the patent application on page 2, lines 11-17, page 3, lines

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1-3, page 3, lines 7-21 and page 4, lines 3-8, page 6, lines 30 through page 7, line 7. The Examiner will appreciate that the new Figs. 9-11 were submitted for purposes of showing claimed subject matter in a drawing and it is incontroverted that the claimed subject matter was fully disclosed in the parent application. For the reasons previously stated it is submitted that the present application does not add matter not disclosed in the earlier application.

Claims 1, 5-7, and 14 have been rejected under 35 U.S.C. 103 as being unpatentable over the admitted prior art (hereinafter APA) in view of FR reference 2,713,291, hereafter FR291".

Applicant respectfully traverses the rejection. In support of its position applicant has obtained and encloses, herewith, an English translation of FR291. Once FR291 is considered in its entirety, it is clear that there is no proper basis for the proposed confirmation. Simply put, FR291 is concerned with a completely different fastening issue. More significantly, the proposed combination does not disclose, teach or suggest the following representative features of independent claims 1 and 14 respectively.

"said upper portion threads and first cross-section being associated with a displaced material derived from the interior region of the composite lumber material, said displaced material having been displaced by said lower portion threads . . . "

"said upper threaded portion associated with a displaced material derived from the interior of the composite lumber member by said lower threaded portion . . . "

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According to the Examiner, FR291 "(in paragraph 10 of the Office Action), is cited, among other things, as having "said upper portion threads and thick cross-section being associated with a displaced material derived from the interior region of the composite lumber material, said displaced material having been displaced by said lower portion threads, and said substantially flat top surface of the head and the composite lumber top surface forming a substantially co-planar interface (Figure 8)."

Applicant has reviewed the French reference and finds absolutely no mention or teaching whatsoever of any displaced material, nor does it appear that any such teaching can be properly inferred. There is further absolutely no teaching whatsoever of the fastener of FR291 addressing, solving or providing in any way a solution to the volcanoing type effect which is provided by Applicant's invention as claimed. Applicant has carefully reviewed the translation of the French reference FR291 and requests that, if the Examiner continues to persist in the rejection over FR291, the Examiner specifically points out where in the reference any displaced material is described or inferred. In this regard, it is noted that in some embodiments, such as those of Figures 6-8, an insert is inserted into a pre drilled hole for the fastener and clearly there appears to be a gap between the top of the insert and the second material A which would clearly mitigate against any issue of material removed during the fastening process and associated with the upper portion threads.

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Moreover, a clear focus of the FR291 fastening screw is in the pressure mechanism, such as flange 8, which is apparently designed to force the second material toward the support structure during fastening process. There is no basis whatsoever that one of ordinary skill in the art would, given the APA, look to the French reference to solve the volcanoing problem.

Claims 5-7, which depend on claim 1 are at least patentable for the reasons advanced for claim 1.

Applicant also respectfully traverses the Examiner's assertion that FR291 teaches the threads having a gauge size of about #12 and a thread pitch of about $24^\circ/24^\circ$ and the threads having a gauge size of about #9 and the threads having a gauge size of about $25^\circ/10^\circ$. Applicant finds absolutely no teaching of specific gauge size nor specific thread pitch in FR291.

Applicant also respectfully traverses the Examiner's assertion with regard to claim 7, that FR291 teaches threads in the upper portion, having a diameter in the range of about 0.65 to about 0.68 of the major diameter. There is again, absolutely no teaching or reference whatsoever, of any specifics as to dimensional relationships between the diameters.

For the forgoing reasons applicant respectfully submits that all claims as presently pending in the application are in condition for allowance accordingly. Favorable reconsideration by the Examiner is respectfully solicited.

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Respectfully Submitted,

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